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By Alex Guillén | 10/4/12 5:29 AM EDT

With help from Andrew Restuccia, Darius Dixon and Darren Goode

DEBATE RECAP — ROMNEY'S SOLYNDRA JABS GO UNANSWERED: President Barack Obama repeatedly passed up opportunities Wednesday night to defend his high-profile green energy program — and made no response to Mitt Romney's jibes about Solyndra. It typified a debate in which Obama and Romney largely talked past each other on energy policy, aside from lobbing talking points on familiar touchstones like gasoline prices, the Keystone XL pipeline, energy production and oil and gas industry taxes. Darren Goode breaks it down for Pros: <http://politico.pro/PRLlHi>

FACT CHECK: In addition to fact checks in Darren's story, Josh Gerstein and Darren Samuelsohn join in on the fact checking fun — including Romney's claim that half of the green energy projects the government has invested in have gone under. Of the 26 winners of DOE loan guarantees under the stimulus's 1705 program, a total of three have gone belly up: Solyndra, Abound Solar and Beacon Power. But Romney's campaign explained that he was including other troubled stimulus grant winners in his claim. Gerstein and Samuelsohn also look at Romney's claim that gasoline prices are double what they were when Obama took office: <http://politi.co/SrPTmr>

CLIMATE GETS NO LOVE: Despite a last-ditch campaign by environmental activists, the first presidential debate Wednesday night was a climate change-free zone. Energy came up multiple times during the debate, but neither Obama nor Romney mentioned the "c word," bypassing talk of climate change in favor of discussion of oil industry tax breaks and investments in renewable energy companies. And moderator Jim Lehrer didn't mention it either.

ALSO NOT MENTIONED: Nuclear power; the 2010 BP oil spill; the environment (only use of the word was from Romney saying "I don't want to kill jobs in this environment."); fuel economy standards; electric vehicles; Keystone XL (by name, that is; Romney promised to "bring that pipeline in from Canada").

DEBATE REACTIONS

— Romney's emphasis on coal could be bad news for Democrat Tim Kaine in the Virginia Senate race, Eliot Spitzer said after the debate on Current TV. "Don't forget there are a lot of down-ballot implications here. If the presidential race comes close in Virginia because of this, because of what Mitt Romney said about coal, then suddenly the Kaine ... race comes up for grabs again," Spitzer said.

— Bracewell Giuliani energy specialist Frank Maisano wrote to ME: "Donald Trump 1, Big Bird 1; Climate Change 0. ... Maybe we need to send the next moderator more spam to see if they'll mention the topic..." Romney scored, Maisano added, with his line saying \$90 billion in green energy investments could have paid for 2 million teachers. "That was much more effective than any other attacks on green energy."

— American Petroleum Institute President and CEO Jack Gerard: "Unfortunately, after suggesting that he's in favor of increased oil and natural gas production, the president called for increased taxes on the industry he wants to help drive our economy and create jobs. Punishing energy companies by raising taxes is not sound energy policy and could lead to less energy, less government revenue, and fewer jobs."

— NRDC Action Fund President Frances Beinecke: "President Obama wants to invest in energy efficiency and renewable power while protecting our health. Gov. Romney would bet our future on the fossil fuels of the past. This is a choice between responsibility and recklessness, and the choice is ours to make."

— National Association of Manufacturers President and CEO Jay Timmons: "Governor Romney was absolutely right when he called for the approval of the Keystone XL pipeline. Keystone XL represented one of the single strongest opportunities for job creation in the past couple of years, and the discussion of energy policy returned the debate right back to where the focus needed to be on — jobs." <http://bit.ly/QZfxJT>

— Truman Project spokesman David Solimini: "Mitt Romney's energy plan ignores the advice of our military leaders and doubles down on oil — even as we send \$1 billion a day overseas for it."

TWEETS OF THE NIGHT

@ChuckGrassley: "Hooray Romney brings up Solyndra where president wasted half billion"

Public Radio International correspondent @toddzwillich: "Dear Coal: Do u like me 2? [] yes [] no [] maybe"

@algore: "President Obama's support for clean energy isn't just good for our planet, but good for our economy too. #current2012"

@boonepickens: "Not buying the \$4 billion in tax cuts claim for the oil industry by President Obama. He needs to explain. Obama#debates #pickensplan"

@MarkeyMemo: ".@MittRomney attacks @PBS in #debate. He wants to cut Big Bird, but let Big Oil keep \$40 billion in tax breaks. #outrageous"

Energy in Depth spokesman @saeveryley: "ExxonMobil, Mr. President? They pay \$12 million in taxes every hour, three times their profits. Care to try again?"

NOT SATISFIED: The Denver Post's editorial board. "We also hoped for more detail on issues such as energy and immigration but were disappointed. Other than taking a swipe at green energy subsidies (Romney) and oil company financial help (Obama), energy got barely any mention at all." <http://bit.ly/Qle0rc>

SPOTTED IN THE DEBATE HALL: Interior Secretary (and Colorado native) Ken Salazar and his wife Hope; former Energy Secretary (and Obama campaign co-chairman) Federico Peña.

ROMNEY HAS COAL RALLY FRIDAY: Romney's going to get extra mileage out of his "I like coal" line. After a stop today with Paul Ryan in Fishersville, Va., Romney is in Abingdon, Va., Friday morning for what his campaign is describing as a "coal country event" at Carter Machinery. Later Friday, Romney will travel to St. Petersburg, Fla.

Obama, meanwhile, starts today with a Denver event before traveling to Madison, Wis. On Friday the president is campaigning in Ohio and Northern Virginia. Vice President Joe Biden is stumping in Council Bluffs, Iowa, today.

HAPPY THURSDAY and welcome to Morning Energy, where we'd like you to read today's edition in the voice of the Count. "Eighty-nine, \$89 billion. Ninety, \$90 billion! A-ha-ha!" Send your energy news to aguillen@politico.com, and follow @alexsguillen, @POLITICOPro and @Morning_Energy.

SHELL STARTS BEAUFORT DRILLING: Shell began exploratory drilling Wednesday in the Beaufort Sea off the coast of Alaska, according to the company. Drilling commenced after the conclusion of the whale hunting season, as per an agreement with the Alaska Eskimo Whaling Commission. Shell began exploratory drilling in the Chukchi Sea last month, although the company has said it won't drill into oil or gas formations off the Alaskan coast this year. "This marks the first time two rigs are drilling, simultaneously, offshore Alaska in more two decades," Shell said in a statement.

NATURAL GAS GROUP PROJECTS LOW PRICES THIS WINTER: The American Gas Association will project today that natural gas prices and winter heating bills are expected to remain low — although likely higher than last year's due to forecasts of colder weather this winter than last. The low prices are due in part, the group says, because of technological advances and an abundant supply of natural gas in the U.S. AGA officials will have more on the winter outlook for the natural gas market this morning at a 9 a.m. briefing at the group's 400 North Capital St. NW headquarters.

— That projection matches the one released by the Natural Gas Supply Association yesterday, which agreed that last year's mild winter drove prices to their lowest point in years. Talia Buford's story, ICYMI: <http://politico.pro/QXYiZt>

COMPANIES CLAIM PROGRESS ON ALASKA LNG EXPORT PROJECT: ExxonMobil, ConocoPhillips, BP and TransCanada say in a letter to Alaska Gov. Sean Parnell that they're making headway on a project to export liquefied natural gas from Alaska's Northern Slope, a project the companies estimate could cost in excess of \$65 billion and use 1.7 million tons of steel. "While good progress has been made, significant environmental, regulatory, engineering and commercial work remains to reach upcoming decisions to bring North Slope gas to market," the companies wrote. "As the concept selection technical work reaches closure, additional commercial agreements as well as support from the state of Alaska will be required in order to progress this world-class opportunity." The letter: <http://1.usa.gov/Srw4LX>

** A message from America's Natural Gas Alliance: Need energy efficiency? Natural gas is powering a solution for you. General Electric's new FlexEfficiency 60 plant can generate power at 61% efficiency, and quickly ramp up and down to accommodate intermittent forms of energy like wind and solar. <http://bit.ly/P6DsLE> **

GRID CONFERENCE TO TALK 'SMART POLICY': The sixth annual GridWeek conference wraps up this afternoon and the DOE's assistant secretary for electricity and reliability Patricia Hoffman is among the morning keynote speakers. Federal Energy Regulatory Commission member John Norris is also expected to participate in roundtable discussion about "smart policy."

FERC recognizes "that consumer buy-in is one key to achieving smart grid implementation," Norris will say, according excerpts of his opening remarks shared with ME. "If consumers can actively participate in energy markets and achieve real cost savings by adjusting their consumption, we will build demand for consumer-side smart grid technologies like meters and on-site energy storage." The final day of GridWeek begins at 8:15 a.m. at the Washington Convention Center.

ITC HEARING ON CHINA SOLAR TECH TARIFFS: The New York Times's Diane Cardwell reports on yesterday's U.S.

International Trade Commission hearing on tariffs on Chinese solar tech: "In trying to make a case for harm, a group of American solar industry executives told the panel of commissioners on Wednesday that they had been forced to close plants, scale back production and lay off workers at a time when they should have been able to take advantage of rising demand for their products. ... But tariff opponents argued that SolarWorld had largely brought its problems on itself, and had proved unable to compete in a world where the low price of natural gas and declining subsidies were putting pressure on solar manufacturers to cut their prices sharply in order to survive." NYT: <http://nyti.ms/ViE5Dg>

TESLA FOUNDER DEFENDS QUICKER DOE LOAN REPAYMENT PLAN: Elon Musk, founder of electric carmaker Tesla, took to the company's blog to address concerns about Tesla's announcement last week that it plans to work out an early repayment system for its \$465 million DOE loan. "DOE believes Tesla will be highly successful and accumulate a large amount of cash, but that we may then choose not to pay off the loan any sooner than is currently required. Far from being worried about our survival, the DOE is highly bullish about our future and doesn't want us to delay early repayment of the loan if we have the cash on hand to do so." Musk also stressed that he expects the company to become cash flow positive by the end of November. <http://bit.ly/QGVkrW>

BIG DIFFERENCES BETWEEN USGS, EPA PAVILLION DATA, EID SAYS: U.S. Geological Survey data on wells in Pavillion, Wyo., contradicts EPA's assertion that fracking activities had polluted groundwater in the area, writes Simon Lomax, research director at the industry publication Energy in Depth. "[F]or those willing to look closely enough at the USGS report, it's hard to see how the EPA can claim the two reports are 'generally consistent.' Actually, that statement is highly misleading, because there are glaring inconsistencies between what the EPA and USGS found. So far, Energy In Depth has identified more than 50 individual measurements from the EPA's draft Pavillion report that have been discredited by the USGS." <http://bit.ly/SqP5hx>

HIGH COURT WEIGHS FLOODING CASE: At times depicting chainsaw-wielding tree cutters and water-soaked landowners, the Supreme Court yesterday tackled governmental responsibility, private property rights and the oft-precarious role of the Army Corps of Engineers. At issue: flooding and who should clean up. Jessica Meyers recaps yesterday's arguments in *Arkansas Game & Fish Commission v. United States*: <http://politico.pro/UG26Q3>

BRYSON JOINS WILSON CENTER: Former Commerce Secretary John Bryson — who resigned earlier this year following health issues — has joined the Woodrow Wilson International Center for Scholars, the group says. Bryson will work on energy and environment topics in addition to economic issues with China, India, Brazil and Japan. "My initial focus will be on the U.S. and its critical need to work effectively with both China, and its 1.4 billion people, and India, with its 1.2 billion," Bryson said in a statement. "But I look forward also to supporting the center's leading work on important related countries, such as Brazil and Mexico, and on critical issues, such as energy and the environment."

FROM PR TO REAL ESTATE: Securing America's Future Energy spokesman Justin Kitsch is leaving the group to join TTR/Sotheby's International Realty.

QUICK HITS

— The Mine Safety and Health Administration has made improvements but still faces inspection and enforcement problems, the Labor Department inspector general says. *Charleston Gazette*: <http://bit.ly/OEpvVc>

— The Coast Guard is looking into an oily sheen spotted near the site of the 2010 Gulf of Mexico oil spill. *Times-Picayune*: <http://bit.ly/QHhMRP>

— Mexico's next president plans a major push to boost that nation's oil production early next year, a transition official says. *Wall Street Journal*: <http://on.wsj.com/PylaO4>

— Opponents of a planned \$10 billion South Dakota oil refinery have asked the state Supreme Court to block a construction permit. *AP*: <http://wapo.st/VwH49T>

HAPPENING TODAY

8:45 a.m. — The U.S. Clean Heat & Power Association Annual Conference continues. Speakers today include White House manufacturing adviser Jason Miller and EPA atmospheric programs director Sarah Dunham. <http://bit.ly/qZ06GR>. L'Enfant Plaza Hotel

9:30 a.m. — The U.S. Energy Association's annual Supply Forum takes place. Speakers include Nuclear Energy Institute chief Marv Fertel and former EIA chief Guy Caruso. <http://bit.ly/QtR6qx>. National Press Club

11 a.m. — American Petroleum Institute Chief Economist John Felmy hosts a teleconference on fracking standards and regulations.

Noon — Resources for the Future hosts an event on risk management in climate policies. <http://bit.ly/QXBJnL>. 1616 P St. NW

2 p.m. — The Consumer Energy Alliance hosts its 2012 Virginia Energy Summit. Speakers will include Lt. Gov. Bill Bolling, Virginia Attorney General Ken Cuccinelli, Virginia Secretary of Natural Resources Doug Domenech, and Tom Pyle of the American Energy Alliance. Richmond, Va.

THAT'S ALL FOR ME. Enjoy the day.

** A message from America's Natural Gas Alliance: We believe in a clean energy future. Natural gas is a cleaner energy choice and a key partner to solar and wind technologies. From California to Florida, natural gas facilities are working with renewable energy to ensure steady, affordable and cleaner energy choices for communities across our nation. Because it is an abundant and affordable energy source available right here in America, natural gas can help make the promise of cleaner energy a reality in more American communities. Natural gas is smarter power today. Visit anga.us to learn more. **

Stories from POLITICO Pro

Romney's Solyndra jabs go unanswered

Nat gas industry predicts return to 'normal'

SCOTUS hears arguments in flooding case

Romney's Solyndra jabs go unanswered back

By Darren Goode | 10/3/12 11:59 PM EDT

President Barack Obama repeatedly passed up opportunities Wednesday night to defend his high-profile green energy program — and made no response to Mitt Romney's jibes about Solyndra.

It typified a debate in which Obama and Romney largely talked past each other on energy policy, aside from lobbying talking points on familiar touchstones like gasoline prices, the Keystone XL pipeline, energy production and oil and gas industry taxes.

Romney whacked Obama over his administration's renewable energy investments, specifically naming Solyndra and other companies that have sunk despite help from DOE.

At times, Romney stretched the facts.

For example, the former Massachusetts governor said that of the companies aided by the green energy programs, "I think about half of them, of the ones have been invested in, have gone out of business." But that way overstates the number of companies that have run into trouble.

As POLITICO has previously reported, three companies have filed for bankruptcy out of the 26 companies backed under the most controversial of those initiatives — the renewable energy loan guarantee program that awarded \$535 million to Solyndra. While some companies that have received stimulus money through other grant and loan programs have faced financial problems, the figure is much less than half.

Obama didn't respond to that statement at all.

He also had no reply to Romney's next charge: "A number of them happened to be owned by people who were contributors to your campaigns." That statement had some basis in fact — in some instances, the Energy Department backed companies that were affiliated with Obama campaign donors. But an 18-month House Republican investigation found no evidence that the loans were given to please Obama's campaign donors, despite much GOP rhetoric to the contrary.

And Romney claimed that the stimulus law "provided \$90 billion in breaks to the green energy world." But according to a White

House summary of stimulus spending, that number encompasses a wide variety of “government investment and tax incentives,” not just green jobs. For example, it included \$21 billion for renewable generation and \$6 billion for manufacturing of advanced batteries, but also \$18 billion for traditional and high-speed rail.

That \$90 billion, Romney said, “could hire 2 million teachers.” He also said Obama’s investments in green energy were 50 times more than tax incentives that oil companies receive.

Romney cited Energy Department figures in saying that oil companies receive a tax break of \$2.8 billion a year, and that those breaks go “largely to small companies, to drilling operators and so forth.”

Democrats use a higher annual figure for oil and gas industry incentives, in part because they include the Section 199 tax incentive for all domestic manufacturers, including oil companies.

In a bit of a curve ball, Romney even hinted that he’d been willing to eliminate the oil industry’s tax breaks as part of a plan to reduce tax rates more broadly — echoing running mate Paul Ryan’s stance on curtailing all energy tax incentives. “Of course it’s on the table,” Romney said. “That’s probably not going to survive, you get that [corporate tax] rate down to 25 percent.”

Obama’s energy pitch largely centered on what he called the candidates’ vastly differing visions of how to create jobs. In his opening statement, he said Romney “has a perspective that says if we cut taxes skewed toward the wealthy and we roll back regulations that we’ll be better off.”

“I’ve got a different view,” Obama added, saying his position includes the opinion that “it’s important for us to develop new sources of energy here in America” like wind, solar and biofuels.

Early in the debate, Romney used the common GOP talking point that gasoline prices have doubled under Obama’s watch. Obama didn’t directly respond to that statement either, although in the past he has noted that there is little if anything that any president can do to affect prices at the pump that are steered by global crude oil prices.

And even today’s near-record gasoline prices are below the \$4.11 a gallon they hit in July 2008, during George W. Bush’s final summer as president. Gasoline prices plummeted later that year amid the global financial collapse, and were averaging \$1.79 a gallon and rising when Obama took office in January 2009,

Obama used the debate to make his familiar boast that domestic oil and natural gas production is higher than when he was sworn in. “We both agree that we’ve got to boost American energy production, and oil and natural gas production are higher than they’ve been in years,” the president said.

Romney retorted that Obama shouldn’t take credit, arguing the increase is “not due to his policies, in spite of his policies.” He added, “All of the increase in natural gas and oil has happened on private land, not on government land.”

Romney promised to double the number of oil and gas permits on public land. “And I’ll bring that pipeline in from Canada,” Romney said, referring to Keystone XL but not specifically naming the project.

The Energy Information Administration has said oil production on federal lands went up each year from 2009 to 2011 compared with the previous three years. Oil production on federal and Indian lands was lower in 2011 than in 2010, which many have attributed to a drop in production in the Gulf of Mexico after the Deepwater Horizon disaster.

The Congressional Research Service has said oil production on federal lands was up slightly in 2011 compared with 2007. But Obama critics note that coal, oil and natural gas production combined on federal and Indian lands has gone down. And they say production now is due to policies and projects approved years ago, before Obama took office.

Andrew Restuccia contributed to this story.[back](#)

Nat gas industry predicts return to 'normal' [back](#)

By Talia Buford | 10/3/12 12:04 PM EDT

Colder temperatures will drive up natural gas demand this winter and push prices for the fuel slightly higher than they were last year, the Natural Gas Supply Association said Wednesday.

But even with that projected increase, the benchmark Henry Hub price will ostensibly be returning to normal levels after last year's mild winter drove prices to their lowest mark in a decade.

That return to normal would be welcomed by the gas producers who suffered through the glut of supply that strained many corporate balance sheets in the first half of the year.

"It feels like an era of stability," said Greg Vesey, vice chairman of the NGSA and president of Chevron Natural Gas. "We've got some minor upward pressure, but over the long term, it does feel like a more stable environment."

Natural gas prices have climbed in recent days, with Henry Hub prices reaching a 2012 high of \$3.21 per million British thermal units. That number is still 36 cents below the same period in 2011, when the price was \$3.57.

Wednesday, the NGSA released its outlook for the coming heating season, projecting that demand will rise to 83.8 billion cubic feet of natural gas per day for the electric, industrial, residential and commercial sectors. That's a 5.8 bcf increase over last year's actual demand usage.

Last year's demand was weak, Vesey said, because it was one of the warmest winters on record, which curbed demand as new supplies flooded the market.

"If you'd asked me in the middle of the summer or spring, I would have said that storage would have been the number one issue, but it's really not," Vesey said. "There will be no upward or downward pressure due to storage."

The nation started last winter with 3,831 bcf in storage, and the NGSA expects to start this winter with 3,900 bcf in storage. That represents a storage capacity of 101 percent, which means utilities will have plenty of gas to draw on during peak winter heating.

Additionally, there will be fewer power plants switching from coal to natural gas this year, Vesey said. More plants used natural gas last year and stockpiled their coal, but this winter, they'll be burning the coal to clear out those reserves. The NGSA projects that coal to gas switching by power plants will add 4.9 bcf per day to demand this year, down from 6 bcf per day last year, "still a very high number," Vesey said.

The NGSA doesn't make price forecasts, but the Energy Information Administration projected in September that the Henry Hub estimate will be \$3.44 in 2013. The EIA will release their winter fuels outlook on Oct. 10.[back](#)

SCOTUS hears arguments in flooding case [back](#)

By Jessica Meyers | 10/3/12 5:18 PM EDT

At times depicting chainsaw-wielding tree cutters and water-soaked landowners, the Supreme Court on Wednesday tackled governmental responsibility, private property rights and the oft-precarious role of the Army Corps of Engineers.

At issue: flooding and who should clean up.

Arkansas Game & Fish Commission v. United States, brought by the Arkansas Game and Fish Commission, hinges on whether temporary flooding constitutes a "taking" by the federal government. The Fifth Amendment requires the government compensate landowners when claiming their property for public use.

The commission sued the feds after occasional corps-permitted flooding destroyed more than 100,000 trees and wildlife habitats in Arkansas forests. This happened for six consecutive years, when the corps allowed the release of water from Missouri's Clearwater Dam.

The commission won more than \$5 million in a federal claims court but got shot down in an appellate ruling last year.

Lawyers for the government insist the flooding didn't amount to a "taking" of property because it was a temporary incident. But commission lawyers argued Wednesday that such an interpretation was not only rigid and misguided, it wasn't fair to suffering property owners.

"The United States must provide just compensation when its direct physical invasion substantially intrudes upon a landowner's protected property interest, regardless of the particular mode or duration of that invasion," commission lawyer James Goodhart told the justices, calling anything else "manifestly unjust."

The justices demanded to know how to establish that baseline.

"The problem with a flood is that you don't take all of the land," said Justice Stephen Breyer. "It sends some stuff in. And the stuff is there for a while and then it comes back. And it's called water."

Justice Sonia Sotomayor highlighted similar difficulties. Flood occurs naturally, she said, and the government builds dams to control water flow and protect regions.

"At some point, either the government is going to make a decision that's going to help someone and potentially hurt someone," she said. "And the question is, 'Are all of those situations going to be subject to litigation?'"

Deputy Solicitor General Edwin Kneedler emphasized those hazy boundaries, calling the case a "classic example of the government adjusting benefits and burdens."

But the justices also pushed back on the government's notion that flooding 110 miles downstream amounted to an indirect and consequential action.

"It's like the old moral of refuge that the rocket designers take," Justice Anthony Kennedy said. "You know, I make the rockets go up; where they come down is not my concern."

An accountability theme echoed throughout the hearing, as justices ended their first week back after summer recess.

"I mean, the issue is who is going to pay for this wonderful benefit for farmers," Justice Antonin Scalia said. "Should it be everybody, so that the government pays, and all of us pay through taxes? Or should it be this particular sorry landowner who happens to lose all his trees?"

The court kept its view narrowed to temporary flooding within the so-called Takings Clause. Its verdict will likely remain as focused, clarifying whether the lower courts can view occasional flooding as a permanent invasion.

It also could have reeling effects on the Army Corps and how it does its job.back

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